account, now here finds the state and condition of the said account to be as stated and set forth in the following summary statement thereof, to wit:

A summary statement of the account of the Public Administrator of the County of New York and administrator of the goods, chattels, and credits of Antonio Comincio, deceased, made by the Surrogate as judicially settled. The said Administrator is chargeable as follows:

With amount as per Schedule A	$1,392.83
With amount as per Schedule C	343.82
Leaving a balance in his hands of	$1,042.98

[fol. 6] And it appearing that the said Administrator has fully accounted for all the moneys and property of the estate or fund of said deceased, which have come into his hands as such Administrator and his account having been adjusted by the said Surrogate and a summary statement of the same having been made as above and herewith recorded, it is hereby ordered, adjudged and decreed, that the said account be and the same is hereby judicially settled.

It is further ordered, adjudged and decreed that out of the balance so found remaining in the hands of said Administrator, he do pay into the City Treasury of The City of New York, the sum of Sixty-nine and 64/100 ($69.64) Dollars for commissions on the estate of said deceased, the same being the commissions to which The City of New York is entitled under Section Third of Chapter 230 of the Laws of 1898, and that he do also pay into the City Treasury pursuant to said Chapter 230 of the Laws of 1898 the sum of Ten ($10.00) Dollars, the costs and disbursements of said Administrator taxed herein by the Surrogate.

And it is further ordered, adjudged and decreed that the Administrator retain the sum of Fifty-four and 70/100 ($54.70) Dollars as his disbursements as taxed herein.

And it appearing that the decedent was domiciled in New York City after a hearing had thereon, and that the next of kin are unknown, so far as the Administrator has been able to ascertain after due diligence and the testimony of the witness produced by the Consul General of Italy at said hearing, it is

[fol. 7] Further ordered, adjudged, and decreed that the Administrator pay the balance of the estate remaining in his hands, to wit, the sum of Nine Hundred Fourteen and 64/100 ($914.64) Dollars, into the City Treasury of the City of New York for the use and benefit of the unknown next of kin of the above decedent, together with the accumulated interest if any.

James A. Foley, Surrogate.

IN SURROGATES' COURT OF NEW YORK COUNTY

[Title omitted]

NOTICE OF APPEARANCE BY ATTORNEY GENERAL

The Attorney General of the State of New York, one of the persons cited herein, hereby appears and admits due, timely and personal service of a copy of the citation [fol. 8] herein returnable April 9, 1929, and demands service of all papers herein on him at his office in the City of Albany, New York.

Dated Albany, N. Y., March 1, 1929.

Hamilton Ward, Attorney General, by Victor R. Kaufman,, Deputy Assistant Attorney General. Office & P. O. address: Capitol, Albany, N. Y., New York City Bureau, 49 Chambers Street, New York City.

To James P. Blue, Esq., Attorney for Public Administrator, Hall of Records, Room 308, New York City.

STATE OF NEW YORK,
City and County of New York, ss:

On this 1st day of March, 1929, before me personally came Victor R. Kaufman, to me known to be a duly constituted Deputy Assistant Attorney General and the person who executed the foregoing instrument and he duly acknowledged to me that he as such Deputy Assistant Attorney General had executed the same in the name and on behalf of the Attorney General for the uses and purposes therein mentioned.

Joseph Ricciotti, Commissioner of Deeds, City of New York.

[fol. 9] IN SURROGATES' COURT OF NEW YORK COUNTY

[Title omitted]

ANSWER OF CONSUL GENERAL OF ITALY

Magno Santovincenzo, Acting Consul General of Italy at New York, answering the petition herein, alleges:

First. That respondent is the duly appointed Acting Consul General of Italy at New York; was duly accredited by the Government of the United States accordingly and is now engaged in the discharge of the duties of said office.

Second. Upon information and belief that the above-named deceased was at the time of his death a subject of the King of Italy and left him surviving no natural heirs and next of kin.

Third. That Section 721, Title 2, Chapter 1, Book Third of the Civil Code of the Kingdom of Italy, in effect June 25, 1865, provides as follows:

[fol. 10] "The law devolves the succession to legitimate descendants, to ascendants, to collaterals, to natural children and to the spouse in the order and in accordance with the rules hereinafter established and in their absence to the patrimony of the State."

Fourth. That the aforesaid statute is still in full force and effect.

Fifth. Upon information and belief that Article VI of the Treaty of Friendship with Persia, proclaimed August 18, 1857, provides:

"In case of a citizen or subject of either of the contracting parties dying within the territories of the other, his effects shall be delivered up integrally to the family or partners in business of the deceased; and in case he has no relations or partners, his effects shall be delivered up to the Consul or agent of the nation of which the deceased was a subject or citizen so that he may dispose of them in accordance with the laws of his country."

Sixth. That the foregoing provision of the treaty between the United States and Persia has been incorporated

in the Consular Convention between the United States and the Kingdom of Italy by reason of the provisions of Article XVII thereof, otherwise known as the "Most Favored Nation Clause," reading as follows:

"The respective Consuls General, consuls, vice consuls and consular agents as likewise the consular chancellors, secretaries, clerks or attaches, shall enjoy in both countries all the rights, prerogatives, immunities and privileges [fol. 11] which are or may hereafter be granted to the officers of the same grade, of the most favored nation."

Wherefore respondent asks that the decree herein provide for the payment of the balance of the estate of the above-named deceased remaining for distribution to the Kingdom of Italy.

Ralph Atkins, Attorney for Acting Consul General of Italy at New York, No. 95 Liberty Street, Borough of Manhattan, City of New York.

[Verified by Magno Santovincenzo.]

IN SURROGATES' COURT OF NEW YORK COUNTY

[Title omitted]

PETITION

To the Surrogates' Court of the County of New York:

The petition of the Public Administrator of the County [fol. 12] of New York having his office in the Hall of Records, Borough of Manhattan, City and County of New York, respectfully states:

That letters of administration upon the goods, chattels and credits of Antonio Comincio, deceased, who at the time of his death resided at 365 East 76th Street, New York City, were granted to your petitioner by the Surrogates' Court of New York County, New York, on the 10th day of March, 1925.

That more than six months has elapsed since the issuance of said letters of administration and that the time for

presentation of claims as fixed by a notice duly published has expired.

That the names and post-office addresses of all creditors or persons claiming to be creditors of the decedent (except such as by vouchers filed with the account appear to have been paid), of the sureties on the official bond of your petitioner, of the widow, husband, of the decedent, of all the next of kin of the decedent (except such as by the vouchers and releases duly executed and filed appear to have been paid), and all other necessary and proper parties, are as follows:

Name	Nature of interest	Post office address
Kin Unknown		
Attorney General of State of N. Y.		Albany, N. Y.

The Consul General of Italy has made claim to this estate on behalf of The Kingdom of Italy under the provision of Section 721 of the Italian Civil Code inasmuch as it appears from the documents filed with your petitioner that decedent left no kin surviving.

Your petitioner knows of no source from which he might [fol. 13] obtain information of decedent's next of kin and therefore desires to publish against an unknown widow and next of kin, if any there be, and purposes depositing the balance in his hands into the City Treasury for the benefit of unknown next of kin unless otherwise directed by the Surrogate.

That to the best of your petitioner's knowledge, information and belief there are no other persons than those above mentioned interested in this proceeding, and that all of said above mentioned persons are of full age and all are of sound mind.

That the estate herein amounts to less than five thousand dollars.

That your petitioner is desirous of rendering to said Surrogates' Court an account of his proceeding, and therefore prays that his account be judicially settled and that the persons above mentioned and all necessary and proper persons be cited to show cause why such settlement should not be had and for such other and further relief as the Court may deem just and proper, and that an order be granted accord-

ing to law directing the service of the citation personally without the State or by publication upon the persons hereinbefore stated to be non-residents of the State or otherwise.

Dated February 11, 1929.

James F. Egan, Petitioner.

Duly sworn to by James F. Egan. Jurat omitted in printing.

[fol. 14] In Surrogates' Court of New York County

[Title omitted]

Account of Proceedings

To the Surrogates' Court of the County of New York:

I, The Public Administrator of the County of New York, [fol. 15] having my office in the Hall of Records, Borough of Manhattan, City and County of New York, do render the following account of my proceedings as Administrator of the goods, chattels and credits of the above named decedent: On the 10th day of March, 1925, Letters of Administration were issued to me.

Schedule A, hereto annexed, contains an itemized statement of all moneys, and other property belonging to the estate or fund, which have come into my hands, or which have been received by any person for me or on my behalf as such Administrator.

Schedule B, hereto annexed, contains an itemized statement of all debts not collected or collectible by me together with the reasons why the same have not been collected and are not collectible; and also a statement of the articles of personal property unsold and the reason of the same being unsold, and their appraised value; and also a statement of all property mentioned therein lost by accident, without any willful default or negligence, the cause of its loss and appraised value. No other assets than those herein set forth, have come to my possession or knowledge, and all the increase or decrease in the value of any assets of said deceased is allowed or charged in said Schedules A and B.

Schedule C, hereto annexed, contains an itemized statement of all moneys paid by me for administration, funeral

and other necessary expenses for said estate, together with the reasons and object of such expenditure.

On or about the 24th day of March, in the year 1925, I. caused a notice for claimants to present their claims against [fol. 16] the said estate to me within the period fixed by law, and at a certain place therein specified to be published according to law, pursuant to the statute in such case made and provided.

Schedule D, hereto annexed, contains an itemized statement of all the claims of creditors, presented to and allowed by me or disputed by me or for which judgment or decree has been rendered against me, together with the names of the claimants, the general nature of the claim, its amount, and the time of the rendition of the judgment.

Schedule E, hereto annexed, contains an itemized statement of all moneys, paid by me to the creditors of the deceased, and their names, and the time of such payment.

Schedule F, hereto annexed, contains an itemized statement of all moneys paid to and property delivered to the legatees, husband, widow or next of kin of the deceased.

Schedule G, hereto annexed, contains the names of all persons entitled as husband, widow, legatee, devisee, next of kin or otherwise, to a share of the estate or fund, with their Post Office addresses and degree of relationship to the deceased; a statement showing the value or approximate value of the interest of such person; a statement showing which of the said persons are infants or incompetents, and whether said infants have any father, mother or guardian, and if so, their names and Post Office addresses to the best of my knowledge, information and belief.

Schedule H, hereto annexed, contains a statement of all other facts affecting my administration of said estate or [fol. 17] fund, my rights and those of others interested therein:

I charge myself as follows:

With amount as shown by Schedule A		$1,392.80
I credit myself as follows:		
With amount of Schedule C	$343.82	
		343.82
Leaving a balance of		$1,048.98

to be distributed to those entitled thereto, subject to the deductions of the amount of my commissions, and the expenses of this accounting.

The said Schedules, which are severally signed by me, are part of this account.

SCHEDULE A

Amount of Inventory filed, Bank of Europe	$1,392.83

James F. Egan, Public Administrator, Administrator of the Goods, &c., of Antonio Comincio, Deceased.

SCHEDULE B

[None.]

James F. Egan, Public Administrator, Administrator of the Goods, &c., of Antonio Comincio, Deceased.

[fol. 18] SCHEDULE C

I have paid the following claims:

Funeral Bill	$226.00
Surrogate's Certificates	.50
Labor	5.00
Advertising for Letters of Administration	12.00
Advertising for Creditors	4.43
Postage	1.00
Serving Citations	1.50
Transfer Tax Proceedings	15.00
Certified Copy of Decree	1.00
Filing Petition for Letters	1.85
Filing Account, etc.	4.00
Transfer Tax and Penalty	71.54
	$343.82

James F. Egan, Public Administrator, Administrator of the Goods, &c., of Antonio Comincio, Deceased.

SCHEDULE D

I have paid the following claims against the estate of the decedent which were duly filed with me, namely: [None.]

The following claims against the estate of the decedent were filed with me and duly rejected pursuant to the statute. The same will be ignored by me in making distri-

bution of the estate, unless otherwise ordered by the Surrogate. Notice thereof is given to said claimants, namely: [None.]

[fol. 19] The following claims against the estate of the decedent have been presented to and allowed by me and remain unpaid, namely: [None.]

I desire the Surrogate to direct the payment of the above claims, unless in the meantime, and before the entry of my decree, I am led to doubt their justice and validity and reject the same.

James F. Egan, Public Administrator, Administrator of the Goods, etc., of Antonio Comincio, Deceased.

SCHEDULE E

[None.]

SCHEDULE F.

[None.]

SCHEDULE G

Relationship	Name & address	Approximate value of interest
Kin unknown		$1,000.00

James F. Egan, Public Administrator, Administrator of the Goods, etc., of Antonio Comincio, Deceased.

[fol. 20] IN SURROGATES' COURT OF NEW YORK COUNTY

[Title omitted]

AFFIDAVIT TO ACCOUNT

STATE AND COUNTY OF NEW YORK, ss:

I, The Public Administrator of the County of New York, as Administrator of the goods, chattels and credits of the above named decedent, being duly sworn, say: That the charges made in the foregoing account of proceedings and schedules annexed, for moneys paid by me to creditors, legatees, and next of kin, and for necessary expenses, are correct; that I have been charged therein with all the interest for moneys received by me and embraced in said

account, for which I am legally accountable; that the moneys stated in said account as collected were all that were collectible, according to the best of my knowledge, information and belief; that the allowances in said decrease in value of any assets, and charges therein, for the increase in such value, are correctly made; and that I do not know [fols. 21 & 22] of any error in said account or anything omitted therefrom which may in anywise prejudice the rights of any party interested in said estate or fund; and that said account contains, to the best of my knowledge and belief, a full and true statement of all my receipts and disbursements on account of said estate or fund, and of all money and other property belonging to said estate or fund which have come into my hands, or which have been received by any other person for me or by my order or authority for my use, and that I do not know of any error or omission in the account to the prejudice of any creditor of or person interested in said estate or fund.

James F. Egan.

Sworn to before me this 11th day of February, 1929.
Agnes M. Reid, Notary Public, New York Co. Cl. No. 436.

Citation, in usual form, omitted in printing.

[fol. 23] In Surrogates' Court of New York County

In the Matter of the Judicial Settlement of the Account of Proceedings of the Public Administrator of the County of New York, Administrator of the Goods, Chattels and Credits of Antonio Comincio, Deceased

Case

Before Hon. James A. Foley, Surrogate

New York, June 6, 1929.

Appearances:

Ralph Atkins, Esq., for the Acting Consul General of Italy.

N. Joseph Slicklen, Esq., for the Public Administrator.

The Surrogate: Mr. Victor Kaufman, Deputy Attorney General, has asked me if it would be possible to have this letter marked in evidence.

Mr. Atkins: I presume this states that they have filed the record.

Mr. Slicklen: All I have before me is a letter from some bank containing all the information given by the decedent at the time he opened the account.

[fol. 24] Laideslie Hak, sworn and examined on behalf of the Public Administrator, testified as follows:

By the Surrogate:

Q. Where do you live?
A. 3049 Creston Street.
Q. What is your business?
A. I am in the Bank of Europe and Trust Company.
Q. A clerk?
A. Yes.

Direct examination.

By Mr. Slicklen:

Q. Where is this bank located?
A. 1449 First Avenue.
Q. That is at the corner of 74th Street?
A. Yes.
Q. Your bank turned over to the Public Administrator account No. 44580 a certain sum of money. Can you tell me in whose name that account was? That account was in the name of Antonio Comincio.
Q. At the time he opened that account did he furnish you with certain information which is required by the bank at the time of the opening of the account?
A. I think so. I don't know. I wasn't there.
Q. Can you tell from your records what information he gave at that time?
A. We have all the pedigree from him. He could not write. We have the picture too.
Q. Can you tell us from your record what information he gave to you at that time?
A. He gave his address.

Q. What is the address?
A. 365 East 76th Street.

By the Surrogate:

Q. What is the date of the opening of the account?
A. June 27, 1921.

[fol. 25] By Mr. Slicklen:

Q. What other information did he give you at that time?
A. Occupation, laborer; born in Italy; age, 64 years. No date.

The Surrogate: Opposite the signature is the name written out apparently by the clerk, and then cross mark, his mark. There is also the witness's name, Henry Resler. Opposite the printed word Residence, on the line, is given 365 East 76. Occupation, laborer; place of birth, Italy; date of birth, 64 yrs. Husband's-wife's name blank. There is a line drawn opposite that. Mother's name, Angelina; father's name, Salvatore. On the back appears the picture of apparently a man about 64 years of age.

By the Surrogate:

Q. Did you know this man yourself?
A. No.
Q. There is no other account there, is there?
A. I have three cards there. The book was lost twice.

By Mr. Slicklen:

Q. Did you get information every time you gave him a new book?
A. What information?
Q. Similar to that which you have on the other card?
A. Yes, certainly.
Q. Did you ask him on each occasion for this information?
A. Yes.
Q. When was the account first opened, can you tell that from your record?
A. On the card it says June 27, 1921.
Q. Since that time the book was lost twice?
A. Been lost twice.

Q. He lived with his father?
A. Yes.
Q. What was his father's name?
A. Salvatore Rosanno.
Q. Was that his real father or foster-father?
A. It was his foster-father.
Q. Was Salvatore married?
A. Yes, he was. He had a wife.
Q. Did you know his wife?
A. Yes. We lived very close by.
Q. Do you recall what her name was?
A. I don't remember exactly her first name, but we used to call her Sperandillo.
Q. I mean the first name?
A. I have forgotten.
Q. Do you know when the decedent first came to the United States?
A. He first came here when he was 21. He deserted and then he returned 10 years later to Italy.
Q. Are you referring now to the decedent or yourself?
A. To the decedent.
Q. When did you first come to the United States?
A. 1892 for the first time.
Q. Was the decedent here at that time?
A. Sure. I found him here.
Q. Do you know how long he had been here before you arrived?
A. We were about the same age. I came here two or three years later than he.
Q. Did you keep up your acquaintance with the decedent after his arrival in the United States?
A. Always.
Q. Do you know whether or not he ever married here?
A. No.
[fol. 29] Q. Was he ever married in Italy?
A. No.
Q. Did he ever speak during his lifetime as to any relatives he might have?
A. He wrote letters to nephews and nieces. He had two sisters, one of whom died.
Q. The sisters that you refer to, were they named Rosanno?

A. They used their husband's name. They are not blood sisters.

Q. They are the sons and daughters of Salvatore Rosanno, are they not?

Objected to as leading.

Overruled. Exception.

A. Yes. They are blood children of Salvatore Rosanno.

Q. So that they were no relation to the decedent at all?

A. Antonio Comincio was one of God's own. He was paid by the Government 5 lira a month. He had no relatives.

Q. Will you explain what you mean by one of God's own?

A. An illegitimate child.

Q. Did the decedent ever say to you whether or not he knew his real father and his real mother?

A. Sure, yes. He knew the mother who nursed him, the second mother.

Q. Did he know his real mother?

A. No.

Q. Did he know his real father?

A. No; the second father.

Q. How did he come to live with the Rosanno family?

A. These people, the Rosannos, were very wealthy.

Q. You are referring to the people that brought him up?

A. Yes.

Q. Was the decedent, Antonio Comincio, taken from a foundling hospital by the Rosanno family?

A. I took him from a hospital in 70th Street.

[fol. 30] The Surrogate: We are talking about another hospital now.

The Interpreter: He is beginning a general statement. He has not answered the question as to whether or not he was taken from a hospital.

By the Surrogate:

Q. Your story was that Comincio came here before you did and he went back to Italy. I want to know when he went back to Italy, before 1892 when you arrived, before or after?

A. I was already here when he left for Italy.

Q. When did he come back.

A. In 9 or 10 months.

Q. Within a year after you got here in 1892?

A. I stayed here some six or seven years and then he left for Italy, and he stayed one year and came back.

Q. That would be about 1899?

A. Yes, 1898 or 1899.

Q. Do you remember what ship he went back on?

A. No.

Q. Did he go back on an Italian boat?

A. Yes.

By Mr. Atkins:

Q. What kind of work did he do during his lifetime when he was here?

A. He used to be a vegetable man. He had a horse and wagon and went around with vegetables.

By the Surrogate:

Q. (Showing Accountant's Exhibit No. 1, a photograph.) Who is that?

A. That is him.

Q. So that from 1889 up to the time he died he stayed continuously in this country?

[fol. 31] A. He never returned again to Italy after that He only went to Italy once.

Cross-examination.

By Mr. Slicklen:

Q. When he took that trip to Italy did he go steerage, first-class or second-class?

A. Third class.

Q. He went on a passport?

A. I believe he did, because at that time I don't believe there was the present law in effect.

Q. Do you know what pier he came in on this last trip?

A. I don't know.

Q. Do you know what ship he came on?

A. No, I do not.

Q. Do you know what steamship line he came back on?

A. An Italian ship, but I can't make the name out—Anchor Line.

The Surrogate: That is the second time he is talking about.

The Interpreter: No, that is the first time.

Q. When he came back the last time he came on the Anchor Line?

A. It was an Italian company. There were a number of passenger vessels and all Italian.

Q. What year was that?

A. Approximately 1899.

Q. Do you know what month of the year it was? Was it in the summer or in the winter?

A. He went in the winter and returned in the summer.

By the Surrogate:

Q. Did he ever become a citizen, get his first papers?

A. He did not become a citizen. He did not apply for his third papers.

Q. Are you a citizen?

A. No. I had the first papers.

[fol. 32] By Mr. Slicklen:

Q. How long did Antonio Comincio live at 365 East 76th Street, to your knowledge?

A. More than 24 or 25 years; always there.

Q. Always in that same house?

A. Always in 76th Street.

Q. Did he ever tell you that America was his country now?

A. He said: I have no one in Italy; why should I go to Italy? However, he expressed an intention to go to Italy if I would go with him, but I had my family here and we did not go.

Q. When he wanted to go to Italy it was merely for a visit?

A. He said: I have $2,000; I wanted to retire and return back to Italy if you will come with me.

Q. Only for a visit?

A. Sure, to retire.

By the Surrogate:

Q. You did not want to go back?

A. I have my family here. I did not want to go.

Q. Did you tell him that?
A. Yes.
Q. What did Comincio say?
A. He said: You won't go, neither will I.
Q. When was that?
A. About five years ago.

Testimony closed.

[fol. 33] OPINION

FOLEY, Surr.:

The Public Administrator of the County of New York has filed an account which shows that the net estate of the intestate is approximately $1,000, which is stated to be payable to unknown next of kin. Pursuant to our statutes this amount would be directed in the decree to be paid into the city treasury of the City of New York to await ascertainment of the next of kin. Ultimately the amount would find its way into the treasury of the State of New York. The Consul-General of Italy at New York in his official capacity has made claim to the balance of this estate upon two grounds: (1) That the decedent's domicile at the time of his death was in Italy, and by reason of the laws of that country and because there are no relatives under such laws entitled to take, the fund must be paid to the Kingdom of Italy as an escheat. (2) It is further claimed that even if the decedent was domiciled in New York the consul is entitled to receive the assets of the estate by virtue of the "Most Favored Nation Clause" contained in the treaty between the United States and Italy, and the related effect of a clause contained in the treaty between the United States and Persia. It is claimed that the latter treaty authorizes the Consul of Persia to receive the effects of a citizen or subject of that country dying within the United States where there is no family or partners in business of the deceased. The clause provides "and in case he has no relations or partners, his effects in either country shall be delivered up to the consul or agent of the nation of which the deceased was a subject or citizen, so that he may dispose of them in accordance with the laws of his country." The [fol. 34] Attorney-General of the State of New York appears and opposes the contention of the Italian Consul-

General. In other words, the questions presented are: (1) Was the decedent at the time of his death domiciled in the State of New York? (2) Regardless of whether he was domiciled here, by reason of the claim that he was originally a national of Italy, did his property pass by succession under the laws of Italy because of the treaty rights? (1) I hold that the decedent's domicile was in the County and State of New York up to the time of his leath. It appears from the testimony that he came here prior to the year 1892, that he returned to Italy for a short visit of a few months about the year 1898. He resided continuously in this state from 1899 to the date of his death in the year 1925. There is some testimony that he at one time spoke about returning to Italy in his later years, but such declarations were vague and indefinite and were never effectuated by any actual return. They were likewise contradicted by contemporaneous and subsequent declarations of the decedent. On three different occasions and within a short time from his death he made declarations to a savings bank that he resided at No. 365 East Seventy-sixth Street, in this county. We have thus a continued residence in this state for a period of upwards of thirty-three years, interrupted only by a brief visit to the intestate's native land. His intention to abandon his domicile of origin and to establish and maintain a domicile in this country is clearly established by the evidence. Both elements of domicile—intent and conduct—have been proven. Citations from the authorities are unnecessary. The leading cases in this state (Dupuy v. Wurtz, 53 N. Y. 556; Matter of Newcomb, 192 N. Y. 238; [fol. 35] Matter of Mesa y Hernandez, 172 A. D. 467; Matter of Chadwick, 109 Misc. 696, at p. 699) support the conclusion that the intestate's domicile was in the State of New York. The distribution of his property must be governed by our Statute of Distribution and by our other laws which deal with the custody of the funds of an estate pending the ascertainment of the next of kin and their ultimate payment into our state treasury. (2) The further contention that because he may have been originally a national of the Kingdom of Italy his personal property passed under the law of Italy and not of New York under the provisions of the treaties referred to must likewise be overruled. It is an elementary rule of the laws of estates that the succession of personal property left by a decedent is governed

exclusively by the law of the actual domicile of the intestate at the time of his death (Story's Conflict of Laws, 8th ed., section 481; Moultrie v. Hunt, 23 N. Y. 394; Depuy v. Wurtz, 53 N. Y. 556; Cross v. United States T. Co., 131 N. Y. 330). Citizenship and nationality on the one hand and domicile on the other involve different principles, but succession to personalty is based upon the finding of domicile only. It is beyond comprehension that the treaty between the United States and Persia ever contemplated any abrogation of this basic rule of law. An examination of the provisions of the Persian Treaty and of the Treaty with Italy compels the interpretation that the consular rights were limited strictly to the receipt of the property of a national of Italy dying here, but domiciled in that country. In the comprehensive opinion of Judge Cardozo in Matter of Adamo (212 N. Y. 214), the rights of the Italian consular officers under the treaty with this country are considered. [fol. 36] In that case it was finally settled in the State of New York that our local statutes governed the appointment of administrators and that the treaty conferred no preference to letters of administration upon the Italian consul. Much of Judge Cardozo's reasoning applies in the present situation. In this proceeding the rights granted by the treaty must be held to be subordinate to the succession statutes of our state. Cases may and do arise where nationals of the Kingdom of Italy, temporarily residing here, but domiciled in that country, may leave personal property which passes under its laws. But in each case the question of domicile when disputed must first be determined. I hold, therefore, that the intestate law of Italy has no application to the present estate. The decree should provide for payment of the balance of the estate into the treasury of the City of New York for the benefit of the unknown next of kin of this decedent, pursuant to the statute of 1898, which regulates the duties of the public administrator in the disposition of the funds held by him. Submit decree on notice settling the account and directing payment accordingly.

[fol. 37] In Surrogates' Court of New York County

Stipulation Settling Case

It is hereby stipulated that the foregoing case contains all the evidence given upon the trial of this proceeding,

and that the same be settled and ordered to be filed and attached to the decree and papers on which it was entered.

Dated October 4, 1929.

Ralph Atkins, Attorney for Appellant. Hamilton Ward, Attorney for State of New York, Respondent. N. Joseph Slicklen, Attorney for Public Administrator, Respondent.

IN SURROGATES' COURT OF NEW YORK COUNTY

ORDER SETTLING AND FILING CASE

On the above stipulation, the foregoing case on appeal, containing all the evidence, is hereby settled and ordered on file.

Dated October 9, 1929.

James A. Foley, Surrogate.

[fol. 38] IN SURROGATES' COURT OF NEW YORK COUNTY

STIPULATION WAIVING CERTIFICATION

Pursuant to the provisions of the Civil Practice Act, it is hereby stipulated that the foregoing consists of true and correct copies of the notice of appeal, decree, papers upon which it was entered, case and exceptions as settled, and of the whole thereof, now on file in the office of the Clerk of the Surrogates' Court, New York County; and certification thereof by the Clerk of said Court is hereby waived.

Dated October 4, 1929.

Ralph Atkins, Attorney for Appellant. Hamilton Ward, Attorney for State of New York, Respondent. N. Joseph Slicklen, Attorney for Public Administrator, Respondent.

IN SURROGATES' COURT OF NEW YORK COUNTY

ORDER FILING RECORD IN APPELLATE DIVISION

Pursuant to Section 616 of the Civil Practice Act and to the stipulation of the parties, it is ordered that the fore-

going printed record be filed in the office of the Clerk of the Appellate Division of the Supreme Court, in the First Judicial Department.

Dated October 9, 1929.

James A. Foley, Surrogate.

[fol. 39] In Supreme Court of New York, Appellate Division

5560

In the Matter of the Judicial Settlement of the Account of Proceedings of the Public Administrator of the Goods, Chattels, and Credits of Antonio Comincio. Deceased.

Order of Affirmance on Appeal from Surrogate—June 23, 1930

An appeal having been taken to this Court by Magno Santovincenzo, Consul of the Kingdom of Italy at New York, from the decree of the Surrogate's Court of the County of New York, entered in the Surrogate's Court on the 3rd day of July, 1929, settling the account of the Public Administrator, and said appeal having been argued by Mr. Ralph Atkins, of counsel for the appellant, and by Mr. Victor R. Kaufmann of counsel for respondent, Attorney General of the State of New York, and by Mr. N. Joseph Slicklen of counsel for respondent, Public Administrator etc.; and the due deliberation having been had thereon,

[fol. 40] It is unanimously ordered and adjudged that the decree so appealed from be and the same is hereby affirmed with costs.

Appellate Division of the Supreme Court, First Judicial Department

Clerk's Office, County of New York

I, George T. Campbell, Clerk of the Appellate Division of the Supreme Court in the First Judicial Department, do hereby certify that the foregoing is a copy of the order

made by said Court, upon the appeal in the above entitled action or proceeding, and entered in my office on the 23d day of June, 1930, and that the original case or papers upon which said appeal was heard are hereunto annexed.

In witness whereof I have hereunto set my hand and affixed the seal of said County, in the County of New York, this 23d day of June, 1930.

George T. Campbell, Clerk. (Seal.)

[fol. 41] In Surrogates' Court of New York County

[Title omitted]

Order on Remittitur—July 17, 1930

Magno Santovincenzo, Consul of the Kingdom of Italy, at New York, having appealed to the Appellate Division of the Supreme Court from the decree of the Surrogates' Court of the County of New York, entered in the Surrogates' Court on the 3rd day of July, 1929, settling the account of the Public Administrator, and the said Appellate Division of the Supreme Court having rendered its decision affirming the said decree with costs, and a certified copy of the order of the said Appellate Division having been duly filed together with the record in the office of the Clerk of the Surrogates' Court, County of New York, [fol. 42] and said costs having been duly taxed by the Clerk of this Court.

Now on motion of N. Joseph Slicklen, Esq., attorney for the Public Administrator, it is

Ordered, adjudged, and decreed that the order of the Appellate Division be and the same is hereby made the order of this Court, and it is further

Adjudged that the Public Administrator recover of the objectant, Magno Santovincenzo, Consul of the Kingdom of Italy at New York, the sum of Eighty-two and 50/100 ($82.50) Dollars, the costs of said appeal, as taxed, and that the Public Administrator have execution therefor.

James A. Foley, Surrogate.

[fol. 26] Q. When was it lost the first time?

A. The first time it was lost on January 2, 1925.

Q. Did you make out a new card at that time?

A. Yes, made out a new card.

Q. Can you tell us the information furnished to you by the decedent at that time in reference to his address particularly?

A. That was the same on the new card.

Q. What was that?

A. 305 East 76th Street.

Q. Then was the book lost again?

A. Then the book was lost.

By the Surrogate:

Q. Your own letter says new book issued October 4, 1924. Have you got that date?

A. Yes, it was the last book, No. 5770. It was closed on May 26, 1925.

Q. That is the time the new book was issued?

A. Yes.

Q. May 26, 1925?

A. Lost on September 29, 1924, and January 2, 1925.

Q. Was the residence given on the issuance of the new book in May, 1925?

A. The same residence, 365 East 76th Street.

The Surrogate: Did he die at that residence, Mr. Slicklen?

Mr. Slicklen: He did.

Q. Have you got any other information there dealing with this man's affairs, birthplace, or anything else?

A. That is all.

Cross-exaxmination.

By Mr. Atkins:

Q. Are you the man that made out this card?

A. No.

[fol. 27] Mr. Atkins: I merely wanted to call attention to the fact that where the mother's name is given it is only the first name, Angelina; the father's name, Salvatore; just the first name.

The Witness: We ask only the first name in the bank of the father and mother on the pedigree.

By the Surrogate:

Q. That card was issued in the regular course of business?

A. Yes.

Q. And made out by the clerk when the account was opened or when a new book was issued?

A. Yes.

GUISEPPE SPERANZO, sworn and examined on behalf of the Acting Consul General of Italy, having been duly sworn, testified as follows (through Mario De Optatis, interpreter):

Direct examination.

By Mr. Atkins:

Q. Where do you live?

A. 933 East 217th Street, New York City.

Q. Where were you born?

A. Italy.

Q. How old are you?

A. 73.

Q. Did you know Antonio Comincio, the decedent in this case?

A. About 34 years.

Q. Where did you first become acquainted with him?

A. In Italy.

Q. Did you live in the same town the deceased did in Italy?

A. Yes.

Q. How well did you know him there?

A. Yes, I did know him well for some time.

Q. What were you chums?

A. Very close. We always went fishing together.

[fol. 28] Q. Who did the deceased live with in Italy?

A. When he lived in Italy at the beginning he lived with his father, and then he deserted and came here.

[fol. 43] IN SUPREME COURT OF NEW YORK, APPELLATE DIVISION

[Title omitted]

ORDER DENYING LEAVE TO APPEAL TO COURT OF APPEALS—Oct. 17, 1930

The above named appellant having moved for leave to appeal to the Court of Appeals from the order of this Court entered herein on the 23rd day of June, 1930.

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the affidavit of Ralph Atkins in support of said motion and the affidavits of N. Joseph Slicklen and Victor R. Kaufmann in opposition thereto, and after hearing Mr. Ralph Atkins for the motion and Mr. N. Joseph Slicklen, of counsel for the Public [fol. 44] Administrator of the County of New York, and Mr. Victor R. Kaufmann, Deputy Assistant Attorney General, opposed,

It is hereby unanimously ordered that the said motion be and the same is hereby denied with $10.00 cost.

Enter.

E. R. F.

[fol. 45] IN COURT OF APPEALS OF NEW YORK

In the Matter of the Judicial Settlement of the Account of Proceedings of the PUBLIC ADMINISTRATOR OF THE COUNTY OF NEW YORK, Administrator, &c., of Antonio Comincio, Deceased; MAGNO SANTOVINCENZO, Acting Consul General of Italy at New York, Appellant; JAMES F. EGAN, Public Administrator of the County of New York, as Administrator, &c., of Antonio Comincio, Deceased, and HAMILTON WARD, Attorney General, &c., Respondents

ORDER DENYING LEAVE TO APPEAL TO COURT OF APPEALS—Dec. 2, 1930

A motion for leave to appeal to the Court of Appeals in the above cause having been heretofore made upon the part

of the appellant herein, and papers having been duly submitted thereon, and due deliberation thereupon had:

Ordered, that the said motion be and the same hereby is denied with ten dollars' costs and necessary printing disbursements.

A copy.

John Ludden, Deputy Clerk. (Seal of the Court.)

[fol. 46] In Surrogates' Court of New York County

[Title omitted]

Order on Remittitur—Dec. 11, 1930

Magno Santovincenzo, Consul of the Kingdom of Italy at New York, having moved the Appellate Division of the Supreme Court, First Department, for leave to appeal to the Court of Appeals from the order entered herein on the 23rd day of June, 1930, and said motion having been on the 17th day of October, 1930, unanimously denied with Ten ($10) Dollars costs, and a certified copy of the order of said Appellate Division having been filed in the office of the Clerk of the Surrogates' Court, County of New York,

Now on motion of N. Joseph Slicklen, Esq., Attorney for the Public Administrator, it is

Ordered, adjudged, and decreed that the order of the Appellate Division be and the same is hereby made the [fol. 47] order of this Court, and it is

Further adjudged that the Public Administrator recover of the objectant, Magno Santovincenzo, Consul of the Kingdom of Italy at New York, the sum of Ten ($10) Dollars, the costs of said motion, and that the Public Administrator have execution therefor.

James A. Foley, Surrogate.

[fol. 48] In Surrogates' Court of New York County

[Title omitted]

Order on Remittitur—Dec. 15, 1930

Magno Santovincenzo, Consul of the Kingdom of Italy at New York, having moved the Court of Appeals from the

order entered herein by the Appellate Division of the Supreme Court, First Department, on the 23rd day of June, 1930, and said motion having been on the 2nd day of December, 1930, unanimously denied with Ten ($10) Dollars costs, and printing disbursements, and a certified copy of the order of said Court of Appeals having been filed in the office of the Clerk of the Surrogates' Court, County of New York,

Now on motion of N. Joseph Slicklen, Esq., Attorney for the Public Administrator, it is

Ordered, adjudged, and decreed that the order of the Court of Appeals be and the same is hereby made the order [fol. 49] of this Court, and it is

Further adjudged that the Public Administrator recover of the objectant, Magno Santovincenzo, Consul of the Kingdom of Italy at New York, the sum of Fourteen and 60/100 ($14.60) Dollars, the costs and printing disbursements of said motion, and that the Public Administrator have execution therefor.

James A. Foley, Surrogate.

[fol. 50] In Surrogates' Court of New York County

[Title omitted]

Order of Substitution—Feb. 19, 1931

Upon the subjoined consent, it is hereby

Ordered, that John J. Bennett, Jr., Attorney General of the State of New York, be and he is hereby substituted in the place of Hamilton Ward, former Attorney General of the State of New York, as the representative of the State of New York in this proceeding.

James A. Foley, Surrogate.

We hereby consent to the entry of the foregoing order.

N. Joseph Slicklen, Attorney for Public Administrator. John J. Bennett, Jr., Attorney General of the State of New York, by Peter J. Brancato, Deputy Attorney General, in Charge of New York Office.

[fol. 51] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL

Antonio Comincio, a subject of the Kingdom of Italy, died in the County of New York, State of New York, and on or about March 10, 1925, letters of administration upon his estate were granted to the Public Administrator of the County of New York by the Surrogates' Court of the County of New York, State of New York.

Said Administrator thereafter instituted a proceeding in said Surrogates' Court for a judicial settlement of his accounts, and in said case the above named appellant prayed that the estate of the decedent be paid to him so that he might dispose of the same in accordance with the laws of Italy. He based his right thereto upon treaties of the United States.

[fol. 52] Said Surrogates' Court, nevertheless, by a decree entered by it in said case on July 3, 1929, directed disposition of the estate in accordance with the statutes of the State of New York, and thereby rendered a decision in favor of the validity of statutes of the State of New York the validity of which were drawn in question on the ground of their being repugnant to treaties of the United States, and also rendered a decision against the validity of treaties of the United States.

The above named appellant appealed from said decree of said Surrogates' Court to the Appellate Division of the Supreme Court of the State of New York, in and for the First Judicial Department, and said Appellate Division thereafter unanimously affirmed said decree by an order made and dated June 23, 1930.

The record in said case was thereupon remitted to said Surrogates' Court, and by an order of said Surrogates' Court made on July 17, 1930, said order of the Appellate Division was made the order of said Surrogates' Court.

By the law of New York no further appeal could be taken, and the determination of the Appellate Division was final, unless an appeal was allowed either by the Appellate Division or by the Court of Appeals, the highest court of the State.

The above named appellant applied to the Appellate Division for leave to appeal to the Court of Appeals, and by an order of said Appellate Division made on October 17, 1930, [fol. 53] leave to appeal was denied.

A certified copy of the owner of the Appellate Division denying leave to appeal was filed in the office of the Clerk of said Surrogates' Court, and by an order of said Surrogates' Court made on December 11, 1930, the order of the Appellate Division was made the order of said Surrogates' Court.

The above named appellant also applied to the Court of Appeals for leave to appeal to said Court of Appeals, and by an order of said Court of Appeals made on December 2, 1930, the motion for leave to appeal was denied.

A certified copy of the order of the Court of Appeals denying leave to appeal was filed in the office of the Clerk of the Surrogates' Court and by an order of said Surrogates' Court made on December 15, 1930, said order of the Court of Appeals was made the order of said Surrogates' Court; and the record in said case now remains in said Surrogates' Court.

In said decree and orders, and in the proceedings had prior thereto, certain errors were committed to the prejudice of the appellant herein, which will more in detail appear from the assignment of errors filed with this petition.

Wherefore said Magno Santovincenzo, Consul of the [fol. 54] Kingdom of Italy at New York, respectfully prays for the allowance of an appeal to the Supreme Court of the United States from the Surrogates' Court of the County of New York, State of New York, to the end that the record in said case may be removed into the Supreme Court of the United States and the errors complained of examined and corrected and said decree and orders reversed; and that a transcript of the record, proceedings and papers in said case, duly authenticated, may be sent to the Supreme Court of the United States.

Dated February 24, 1931.

Magno Santovincenzo, Consul of the Kingdom of Italy at New York, by Carroll G. Walter, Attorney.

[fol. 55] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL

Now comes Magno Santovincenzo, Consul of the Kingdom of Italy at New York, the appellant above named, and respectfully submits that in the record, proceedings and final decree of the Surrogates' Court of the County of New York, State of New York, in the cause mentioned in the petition herewith presented, there is manifest error in this, to wit:

1. The State courts erred in sustaining the validity of the statutes of New York with respect to the disposition of the estate of a subject of the Kingdom of Italy dying in New York without relations or partners, as against the claim that under the treaties of the United States the appellant, as Consul of the Kingdom of Italy at New York, was entitled to receive such estate so that he may dispose of the same in accordance with the laws of Italy.

[fol. 56] 2. The State courts erred in disposing of the estate of a subject of the Kingdom of Italy in accordance with the statutes of the State of New York instead of in accordance with the treaties of the United States.

3. The State courts erred in giving effect to the statutes of New York instead of to the treaties of the United States.

4. The State courts erred in refusing to direct payment of the estate to the appellant as Consul of the Kingdom of Italy at New York.

5. The State courts erred in directing the administrator to dispose of the balance of the estate in his hands in accordance with statutes of the State of New York.

Wherefore, and for divers other reasons upon which the said decree was made, the appellant prays that said decree may be reversed, and that the appellant be restored to all things that he has lost by reason thereof.

Carroll G. Walter, Counsel for Appellant, 72 Wall Street, Borough of Manhattan, City of New York.

[fol. 57] IN SUPREME COURT OF THE UNITED STATES

MAGNO SANTOVINCENZO, Consul of the Kingdom of Italy at New York, Appellant,

against

JAMES F. EGAN, Public Administrator of the County of New York, as Administrator of the Goods, Chattels and Credits of Antonio Comincio, Deceased, and John J. Bennett, Jr., Attorney-General of the State of New York, Appellees

ORDER ALLOWING APPEAL

The above named appellant having prayed for the allowance of an appeal to the Supreme Court of the United States from the Surrogates' Court of the County of New York, State of New York, to review and reverse a decree made by said Surrogates' Court in the matter of the judicial settlement of the account of proceedings of the Public Administrator of the County of New York as administrator of the goods, chattels and credits of Antonio Comincio, deceased (said decree having been affirmed by the Appellate Division of the Supreme Court of the State of New York and a review of said decree having been refused by the Court of Appeals of the State of New York on December 2, 1930, and the record in said cause having been remitted to said Surrogates' Court, where the same now remains), [fol. 58] and having presented his petition for appeal, assignment of errors and prayer for reversal, pursuant to the statutes and rules of the Supreme Court of the United States in such case made and provided; it is

Ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the Surrogates' Court of the County of New York, State of New York, in the cause in which the above mentioned decree was made, and from the decree of said Surrogates' Court in said cause as so affirmed by the Appellate Division of the Supreme Court of the State of New York; and it is further

Ordered that the Clerk of said Surrogates' Court prepare and certify a transcript of the record, proceedings and decree in said cause and transmit the same to the

Supreme Court of the United States, so that he shall have the same in said court within thirty days from this date; and it is further

Ordered that security for costs on appeal be given in the sum of five hundred dollars.

Dated February 25th, 1931.

Harlan F. Stone, Associate Justice Supreme Court of the United States.

[fols. 59-65] Bond on appeal for $500.00, approved February 25, 1931, omitted in printing.

[fols. 66 & 67] Citation, in usual form, showing service on N. J. Slicklen and A. W. Jones, omitted in printing.

[fol. 68] In Surrogates' Court of New York County.

Stipulation re Transcript of Record

It is hereby stipulated by and between the undersigned attorneys for the respective parties herein that the papers to be transmitted to the Supreme Court of the United States by the Clerk of the Surrogates' Court of the County of New York, State of New York, pursuant to the appeal allowed herein by Hon. Harlan F. Stone, Associate Justice of the Supreme Court of the United States, on February 25, 1931, are the following, and that this stipulation shall take the place of the præcipe required to be filed by counsel for the respective parties under and pursuant to Rule 10 of the Rules of the Supreme Court of the United States:

1. The printed case on appeal upon which the case was heard in the Appellate Division of the Supreme Court of the State of New York.

2. The Appellate Division's order of affirmance, made on June 23, 1930; the Surrogate's order on remittitur, made on July 17, 1930; the Appellate Division's order denying leave to appeal to the Court of Appeals, made on October 17, 1930; the order of the Court of Appeals denying leave to appeal, made on December 2, 1930; the Surrogate's order

on remittitur, made upon the order of the Appellate Division denying leave to appeal on December 11, 1930; the Surrogate's order on remittitur, made upon the order of the Court of Appeals denying leave to appeal on December 15, 1930; the order of substitution made on February 19, 1931.

[fol. 69] 3. The petition for appeal to the Supreme Court of the United States; the assignment of errors and prayer for reversal accompanying said petition; the order allowing said appeal; the citation thereon; and the bond on appeal; all filed with the Clerk of the Surrogates' Court of the County of New York on February —, 1931.

4. The present stipulation.

It is further stipulated that the foregoing consist of true and correct copies of all said papers, now on file in the office of the Clerk of the Surrogates' Court of the County of New York, and that the Clerk of said Surrogates' Court may certify the foregoing as the transcript of record upon said appeal to the Supreme Court of the United States without further formality.

Dated New York City, February 27th, 1931.

Ralph Atkins, Attorney for Magno Santovincenzo, Consul of the Kingdom of Italy at New York. N. Joseph Slicklen, Attorney for Public Administrator. John J. Bennett, Jr., Attorney General of the State of New York, by Robert P. Beyer, Deputy Assistant Attorney General.

[fols. 70 & 71] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 72] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION TO PRINT ENTIRE RECORD—Filed Mar. 10, 1931

Now comes the above named appellant, pursuant to paragraph 9 of Rule 13 of the Rules of this Court, and states that the points upon which he intends to rely in this court in this case are as follows:

Point I. Under the treaties of the United States set forth in appellant's answer herein, the appellant was and is entitled to receive the estate of the decedent.

Point II. Those treaties constitute the supreme law of the land, and every state statute inconsistent therewith is invalid.

[fols. 73 & 74] Point III. The statutes of New York, in accordance with which the courts below directed payment of the estate, are inconsistent with those treaties and hence invalid.

Point IV. The courts below, in substance and effect, have denied the validity of the treaties.

The appellant further represents that the whole of the record, as filed, is necessary for the consideration of the case, except the bond and citation upon this appeal.

Carroll G. Walter, Counsel for Appellant.

Service of the foregoing statement and designation is hereby admitted this 27th day of February, 1931.

N. Joseph Slicklen, Attorney for Public Administrator. John J. Bennett, Jr., Attorney General of the State of New York, by Robert P. Beyer, Deputy Attorney General.

[fol. 75] [File endorsement omitted.]

Endorsed on cover: File No. 35,769. New York, Surrogates' Court of the County of New York. Term No. 787. Magno Santovincenzo, Consul of the Kingdom of Italy at New York, appellant, vs. James F. Egan, Public Administrator, etc., and John J. Bennett, Jr., Attorney General of the State of New York. Filed March 10, 1931. File No. 35,709.